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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ LPA 11/2025 and CM APPLs. 750-751/2025

MUNICIPAL CORPORATION OF DELHI .....Appellant

Through: Dr. Divya Swamy, Standing Counsel with Ms. Akriti Singh and Mr. Rishav Ranjan, Advocates

versus

KRISHAN KUMAR & ORS. .....Respondents

Through: Mr. Rajiv Agarwal, Ms. Surbhi B., Ms. Meghna De and Ms. L. Gangmei, Advocates

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% 09.01.2025

C. HARI SHANKAR, J.

1. We are not inclined to entertain this appeal either on the aspect of maintainability or on merits.

2. The appeal preferred under Clause X of the Letters Patent as applicable to this Court, assails an ad interim order dated 6 December 2024 passed by a learned Single Judge of this Court in WP (C) 12045/2024.

3. WP (C) 12045/2024 emanated out of an award dated 18 March 2020 passed by the learned Industrial Tribunal, which in turn

adjudicated a claim by the respondents workmen for regularization of their services on the post of Driver from the date of initial joining.

4. The Industrial Tribunal held in favour of the workmen.

5. Aggrieved thereby, the MCD approached the learned Single Judge of this Court by way of WP (C) 12045/2024.

6. The writ petition was accompanied by CM APPL. 50168/2024 which stayed the operation of the award passed by the learned Industrial Tribunal.

7. On 6 December 2024, the learned Single Judge issued notice on the stay application and passed certain *ad interim* directions. It is against the said order that the present appeal has been filed.

8. We deem it appropriate to reproduce the impugned order in its entirety thus :

> **"CM APPL. 50169/2024 (exemption from filing of complete trial court record)**
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> 1. The petitioner is directed to place on record the complete trial court record within two weeks. Accordingly, the application stands disposed of.
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> **CM APPL. 50168/2024 (stay)**
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> 2. Learned counsel for petitioner/MCD presses for interim relief, stating that recovery certificate has already been issued. Although according to learned counsel for respondents, that is not so, but he is not averse to addressing the preliminary submissions today. As such I have heard learned counsel for both sides.
>
> 3. The petitioner/MCD has challenged the award dated 18.03.2020 passed by the learned presiding officer of the Industrial

Tribunal, whereby the present petitioner was directed to regularize services of the six workmen on the post of driver with effect from their respective initial date of joining in the regular pay scale with all consequential benefits.

4. Learned counsel for petitioner/MCD contended that the impugned award is liable to be set aside since the petitioner has already regularized services of the said respondents/workmen in accordance with their regularization policy with effect from 2003-04.

5. On the other hand, learned counsel for respondents/workmen has taken me through cross examination of the Administrative Officer of MCD, who was examined as MW-1 before the tribunal. The said witness admitted in his cross examination that the management of the MCD prepares their financial budget based on total number of sanctioned posts and pays the salaries accordingly; and that phased manner of regularization policy of MCD pertains to Class-IV daily wagers/muster roll employees while the post of the driver is a „Group-C" post; and that job of the driver with MCD is of permanent and perennial nature. Learned counsel for respondents/workmen also took me through the said policy of the MCD and pointed out that the same, issued in the year 1978 was only till the year 1982-83 whereas in the present case the respondent workmen were engaged in the year 1995.

6. The issue needs detailed deliberations. Considering the overall circumstances, the operation of the impugned award as regards the date of regularization is stayed till next date, subject to the petitioner/MCD releasing the monetary benefits to the respondents/workmen within six weeks, provided each of the respondents/workmen files an affidavit of undertaking to refund the entire amount to MCD depending upon outcome of this petition.

7. It appears that few more writ petitions of the similar nature filed by MCD are pending before this Court. It would be appropriate to club all those petitions for expeditious disposal and uniformity of decision. Therefore, both sides are requested to furnish list of all those cases to the court master, who shall initiate process to get all those matters listed on same date for arguments.

8. Relist on 05.03.2025."

9. To our mind, the present appeal in the first place is not maintainable and even otherwise would not sustain a legitimate

challenge, given the parameters of appellate jurisdiction while dealing with discretionary interim orders passed by Courts below, as explained by the Supreme Court in judgment in ***Wander Ltd. v Antox India (P) Ltd***[1]**.**

10. The contours of the expression "judgment" as implied in Clause X of the Letters Patent stand exhaustively delineated by the judgment of the Supreme Court in ***Shah Babulal Khimji v Jayaben D Kania***[2], We have had an occasion recently to examine this position in ***Shiv Prakash Katiyar v Jawahar Lal University***[3]. The following passages from the said decision may be reproduced:

> 8. Thus, an LPA lies only against a judgment. On being further queried as to how the impugned order of the learned Single Judge qualifies as a judgment for the purposes of Clause 10 of the Letters Patent, Mr. Saini places reliance on the decision of the Supreme Court in ***Shah Babulal Khimji v Jayaben D. Kania,*** which is generally regarded as the authority on the point. Mr. Saini has drawn attention to para 106 of the decision in ***Shah Babulal Khimji***, which reads thus:
>
> > "106. Thus, the only point which emerges from this decision is that whenever a Trial Judge decides a controversy which affects valuable rights of one of the parties, it must be treated to be a judgment within the meaning of the Letters Patent."
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> 9. A bare reading of para 106 of ***Shah Babulal Khimji*** reveals that, in order for an order to constitute a "judgment" within the meaning of Clause 10 of the Letters Patent, it has to satisfy two indicia. It must decide a controversy, and the decision must affect valuable rights of one of the parties. *Cumulative satisfaction* of both these conditions alone would render an order a "judgment", as would be appealable by way of LPA.
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> 10. Mr. Saini's contention is that a holistic reading of the

[1] **1990 Supp SCC 727**
[2] **(1981) 4 SCC 8**
[3] **2024 SCC OnLine Del 7339**

decision in ***Shah Babulal Khimji*** would reveal that any decision which affects the valuable rights of one of the parties to the litigation would qualify as a "judgment", even if it is not determinative of any issue before the Court.

11. We cannot agree, as that would conflict with the plain words of para 106 of the decision in ***Shah Babulal Khimji***.

12. The scope and ambit of the expression "judgment", within the meaning of Clause X of the Letters Patent, came up for consideration before a Full Bench of this Court in ***UOI v Usha Sodhi***[4]. Paras 7 to 16 of the report address the issue, thus:

> "7. At this juncture, we think it necessary to deal in some detail as to what a judgment signifies. Clause 10 not only makes the High Court a Court of appeal from other Civil Courts and Courts subject to the High Court's special superintendence but also invest it with appellate jurisdiction in such cases as may, after the date of publication of Letters Patent, be made subject to appeal to it by any law made by a competent legislative authority for India.
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> 8. "Judgment" has been defined in the Code of Civil Procedure, 1908 (in short CPC) indicating that it is a statement of grounds of decree or order. It is judicial determination, decision of a Court. It denotes the reasons given for its decision. The words "Judgment" and "Final Order' have acquired a technical meaning. "Judgment" means "the declaration or final determination of the rights of the parties in the matter brought before the Court" and "final Order" means an order which finally determines the rights of the parties and brings the case to end." (See ***S. Kuppuswami Rao v King***[5]). These words were given the same meaning by the Privy Council in construing Section 109 of the CPC (See. ***Ramchand Maujimal v Goverdhandas***[6]). By the federal Court in construing Section 205 of the government of India Act of 1935 (in ***S. Kuppuswami's*** case *supra*) and by the Apex Court in construing Articles 133 and 134 of the Constitution (See. ***Sardar Syendna Tahar Saifuddin v State of Bombay***[7], ***Jethanand & Sons v State of U.P.***[8], and ***State of U.P. v Sajan Singh (Col)***[9]) Encyclopedia of Laws of

[4] **AIR 2000 Del 405**
[5] **AIR 1949 FC 1**
[6] **AIR 1920 PC 86**
[7] **AIR 1958 SC 253**
[8] **AIR 1961 SC 794**
[9] **AIR 1964 SC 1897**

England states that judgment is the determination of a Court declaring rights to be recognised and remedies to be awarded between the parties upon facts found by the Court or jury or admitted by the parties or upon their default in the course of proceedings instituted for the redressal.

9. Black defines it as determination or sentence of law, pronounced by a competent judge or Court; as the result of an action or preceding instituted in or before such Court or Judge, affirming that upon the matters submitted for its decision, legal duty or liability does or does not exist.

10. "Judgment" is that which decides the case, one way or the other in its entirety and it does not mean a decision or order of interlocutory character, which merely decides some isolated point, not affecting the merits of result of the entire suit. It is a remedy prescribed by law for redress of injuries; and suit or action is the vehicle or means of administering it. What that remedy may be, is, indeed the result of deliberation and study to point out; and therefore the style of the judgment is, not that it is decreed or resolved by the Court, for then the judgment might appear to be their own.

11. In ***State of Bihar v Ram Narain***[10], which was dealing with a matter under Section 494 Cr.P.C.1898, it was held that the word "judgment" is a word of general import and means only judicial determination or decision of a Court. Even if judgment is to be understood in a limited sense it does not follow that an application during the preliminary enquiry...is excluded. In ***Gurdit Singh v State of Punjab***[11] , it was observed that judgment is affirmation by law of the legal consequences attending, approved or admitted state of affairs of all facts. Its recording gives an initial confirmation of a pre-existing relation or establishes a new one on pre-existing grounds. An order is the decision made during the progress of the cause, either prior to or subsequent to final judgment, settling some point of practice or some point collateral to the main issue presented by pleadings and necessary to be disposed of before such issue can be passed upon by the Court, or necessary to be determined in carrying into execution of the final judgment.

12. Judgment as has been noticed in Corpus Juris Secundum Vol.48 is a word difficult to define or prescribe

[10] **AIR 1957 SC 389**
[11] **AIR 1974 SC 1791**

by limits or boundaries. It may be used in strict technical sense to final determination of the rights of the parties in an action or in general or popular sense indicating the decision or conclusion at which one has arrived upon a given question and in a specified and very limited use, it has been described as legalistic term for a particular record.

13. In Corpus Juris Secundum, (Vol.49) it has been stated that in its broadest sense, a judgment is a decision and sentence of the law given by a Court of justice or other competent Tribunal as a result of proceedings instituted therein or the final consideration and determination, of a Court on matters submitted to it in an action or proceedings, whether or not execution follows thereon. More particularly, it is a judicial determination of matter submitted to a Court for decision which determines whether, a legal duty or liability, does or does not exist, or that with respect to a claim in suit, no cause of action exists or no defence exists. In the broad sense a decision of any Court is a judgment, including Courts of enquiry, admiralty or probate. A judgment is the judicial act of a Court by which it accomplishes the purpose of its creation. It is judicial declaration by which the issues are settled and the rights and liabilities of the parties are fixed as to the matters submitted for decision. In other words, a judgment is the end of law; its rendition is the object for which jurisdiction is conferred and exercise and it is the power by means of which a liability is enforced against a particular person.

To put it differently a judgment is a judicial act which settles the issues, fixes rights and liability of parties and determines the proceedings, and it is regarded as a sentence and is pronounced by the Court on the action or question before it. As a general rule decisions, opinions, findings or verdicts do not constitute a judgment or decree but merely form the basis on which the judgment is subsequently rendered.

14. In Halsbury's Laws of England, Vol. 26, (para 501) it has been stated that the words "order" and "judgment" are sometimes used as though 'order was the genus of which 'judgment' was a species; e.g "to constitute and order a final judgment nothing more is necessary than that there should be a proper contestation, and a final adjudication between the parties" (See ***Re. Faithfull, ex***

parte Moore[12])

15. It is to be noted that ***Hans Kumar's case (supra)*** was based on two premises, namely, judgment of single Judge was not given in ordinary jurisdiction of the High Court but in special jurisdiction and therefore, that order was not a judgment. The two premises are inseparable from each other. One cannot exist without the other. The first premise expressed in ***Hans Kumar's case*** is no longer valid in view of the subsequent decision in ***Gauri Shanker's case (supra)***. It would follow that second premise also ceased to be valid.

16. In view of what has been stated by the Apex court in ***Gauri Shanker's case (supra)*** the theory that an appeal takes colour from the original proceedings is not to be carried too far. Similarly view was also expressed by a Full Bench of this Court in the ***Municipal Corporation of Delhi v Kuldip Singh Bhandari and Ors***[13]. The three relevant aspects which need to be considered are:

(1) The nature of Tribunal
(2) The original proceeding before it, and
(3) The nature of the decision given by it.

It would not be correct to say that because of Tribunal was not a Court or proceeding before it was not a suit or its decision was not a judgment but an award the High Court hearing an appeal against its decision would not be a Court or that its decision in the appeal would not be a judgment. The following observations in ***National Telephone Company Ltd v Postmaster General***[14] clearly apply to such a case:

> "Where by statues matters are referred to the determination of a Court of record with no further provision, the necessary implication is, I think, that the Court will determine the matters, as a Court. Its jurisdiction is enlarged, but all the incidents of such jurisdiction, including the right of appeal from its decision, remain the same" (per Lord Parker of Waddington)"."

13. In ***Krishan Avtar v Om Prakash Gupta***[15], the expression

[12] **(1885) 14 QBD 627**
[13] **AIR 1970 Del 37**
[14] **(1913) AC 546**
[15] **(1981) SCC Online J&K 37**

"judgment" within the meaning of Clause XII of the Letters Patent applicable to State of Jammu and Kashmir was held as implying "an order which effectively decide some right or liability in controversy between the parties to the main proceedings, irrespective of the fact whether such an order is final or made at any interlocutory stage". In the context of Clause X of the Letters Patent, applicable to Nagpur, a Division Bench of High Court of Madhya Pradesh, in ***Jagatguru Shri Shankaracharya Jyotish Peethadhiswar Shri Swaroopanand Saraswati v Ramji Tripathi***[16] defined "judgment" thus:

> "A 'judgment' within the meaning of clause 10 of the Letters Patent would have to satisfy two tests: First, the judgment must be the final pronouncement which puts an end to the proceeding so far as the Court dealing with it is concerned. Second, the judgment must involve the determination of some right or liability, though it may not be necessary that there must be a decision on the merits. But the adjudication of an application which is nothing more than a step towards obtaining a final adjudication in the suit, is not a judgment within the meaning of clause 10 of the Letters Patent. An order transferring a suit from one Court to another is not a 'judgment, as it neither affects the merits of the controversy between the parties in the suit itself, nor does it terminate or dispose of the suit on any ground. It is only an application in a suit as a step towards determination of the controversy between the parties in the suit."

14. Not all interlocutory orders are excepted from the category of "judgment" for the purposes of appeal under the Letters Patent. In the context of Clause XV of the Letters Patent of the Madras High Court, the Supreme Court held, in ***Tamilnad Mercantile Bank Shareholders Welfare Association v S.C. Sekar***[17] that "an interim injunction granted till disposal of the contempt petition would come within the ambit of the expression "judgment" for the purpose of Clause XV of the Letters Patent of the Madras High Court".

15. In ***Oriental Insurance Company Ltd v Saraswati Bai***[18], a Full Bench of the High Court of Madhya Pradesh held that "the word 'judgment' as used in Clause X of Letters Patent means a decision in an action whether final, preliminary or interlocutory *which decides either wholly or partially, but conclusively insofar as Court is concerned, the controversy which is the subject of*

[16] **AIR 1979 MP 50**
[17] **(2009) 2 SCC 784**
[18] **1994 SCC Online MP 199**

action". In ***Life Insurance Corporation of India v Sanjeev Builders Pvt Ltd***[19]**,** it was held that, for an order to be a "judgment", it was not always necessary that it should put an end to the controversy or terminate the suit. *An interlocutory order determining the rights of the parties in one way or the other would also be a "judgment"*.

16. Howsoever widely one may interpret the expression, the order under challenge, passed by the learned Single Judge in the present case, is not a "judgment". It merely issues notice on the application filed by the appellant. It does not decide any issue one way or the other. It does not even contain a tentative expression of opinion on the merits of the application or on its eventual fate.

17. If an order such as the one under challenge in the present case, which merely issues notice on an application, is to be treated as a "judgment" within the meaning of Clause X of the Letters Patent, every order passed by a Single Judge would become a judgment, appealable in LPA."

11. The aforesaid decision also considers the judgment of the Supreme Court in ***Shah Babulal Khimji.***

12. ***Shah Babulal Khimji*** quite clearly envisages a Letters Patent Appeal only against a judgment which determines the right of the parties. That determination may be a final determination or an interim determination against a final order passed on an interlocutory application in a writ petition, therefore, an LPA may legitimately be maintainable.

13. In the present case, however, CM 50168/2024 is still pending before the learned Single Judge. There is, therefore, no determination, or even interim determination, of the application filed by the appellant. The impugned order cannot, therefore, be treated as a "judgment" within the meaning of Clause X of the Letters Patent.

[19] **(2018) 11 SCC 722**

14. Even on merits, the impugned order merely expresses a *prima facie* view. In ***Wander Ltd v Antox India P Ltd***[20]**,** the Supreme Court has spoken thus on the advisability of interference by appellate courts with discretionary orders passed by the Courts below in interim applications:

> "14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in ***Printers (Mysore) Private Ltd. v Pothan Joseph***[21]***:***
>
> > "... These principles are well established, but as has been observed by Viscount Simon in ***Charles Osenton & Co. v Jhanaton***[22] '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."

15. Having perused the interim order, we do not find any such fatal infirmity in the exercise of discretion by the learned Single Judge

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[20] **1990 Supp SCC 727**
[21] **AIR 1960 SC 1156**
[22] **1942 AC 130**

while deciding on the aspect of *ad interim* relief, as would justify interference in the present appeal.

16. We are, therefore, not inclined to entertain this appeal, which is, accordingly dismissed in *limine*.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JANUARY 9, 2025*/yg*

Click here to check corrigendum, if any